

Topsfield Conservation Commission

Minutes for July 11, 2007

Topsfield Library Conference Room

Present: Walter Harmer, Chair, Wade Goldman, Ralph Stump, John Olcott, and Lana Spillman, Administrator.

Absent: Dylan Cadwalader, Thomas Warren.

Harmer called the meeting to order at 7:15 p.m. with a quorum present.

Selectboard Liaison to the Commission, John McArdle, was present.

MINUTES:

Stump moved to approve the minutes of **January 24, 2007** as amended. The motion was seconded and passed unanimously.

HEARINGS:

Continuation NoI 307-___: Asbury Street Bridge and Rowley Bridge Road Bridge, (Maps 21 and 55) Town of Topsfield/Richard Benevento of Jacobs, Edwards, & Kelcey.

No representatives were present. Harmer asked that the curved bridge be moved toward Ipswich Road. He asked Spillman to relay this message to Dave Bond, Highway Superintendent. Stump moved to continue the hearing under the Act and the Bylaw to August 22 in order to receive the DEP comment sheet with file number. The motion was seconded and passed unanimously.

Continuation NoI 307-0587: 417 Boston Street, (Map 12, Lot 32) Surrey Development Corporation/Neve-Morin Group, Inc.

A revised plan dated June 28th was received by TCC on July 2nd, showing more gentle slopes to the detention ponds. A letter from NHESP requires that a wildlife evaluation be performed since the proposal is for work within actual habitat of the Blue-Spotted Salamander. Hochmuth representing, discussed the Wildlife Habitat assessment requirement by NHESP. Oxbow Associates out of Acton, with Scott Smyers and his associates were hired to do the required evaluation. He understood that they were at the site the previous day. They have not yet received information from Oxbow. Harmer explained that the Commission may need to review the qualifications of Oxbow Associates. Hochmuth clarified that MA Fisheries and Wildlife chooses the company to do the evaluation and will send the report to Neve-Morin Group and to the Commission. He added that if they do find habitat it does not necessarily mean that the project cannot go forward – they might have to scale it back. Hochmuth discussed changes that have been made to the plan. He said that engineer John Morin had not pulled the detention pond edge back all the way to the wetland because that would “wipe out the buffer area.” Stump moved to continue the hearing under the Act and the Bylaw in order to receive the additional necessary information. The motion was seconded and passed unanimously.

Continuation NoI 307-0588: 20 Aaron Drive, (Map 12, Lot 8) Lori & Jeffrey Peacock, Jr./Neve-Morin Group, Inc.

Greg Hochmuth of The Neve-Morin Group represented the applicants. TCC had received a revised plan dated June 28, 2007 on July 2nd, showing the Buffer Zone from the wetland flags at the edge of the “detention pond,” and a “buffer zone enhancement area.” Hochmuth discussed the revised plan, which he explained had been modified to include Riverfront Area calculations, addition of an infiltration trench, and addition of the “enhancement area”. The Commission asked that monitoring for and removal of invasive plants from the enhancement area be a condition of the Order of Conditions. Harmer explained that the Commission is looking for lower areas of restoration plantings, e.g. in the area where blueberry bushes are proposed being at least six inches lower than

the existing lawn. Hochmuth agreed to take out 12 inches of soil, then add back 6 inches of loam prior to planting. This is to be a condition in the Order. Stump moved to close the hearing and to issue an Order of Conditions under the Act and Bylaw with special conditions as discussed. The motion was seconded and passed unanimously.

Continuation NoI 307-0590: 1 Ledgewood Circle, (Map 20, Lot 16), David and Joseph Sunderland. The Emergency Certification for tree removal was issued the day after the last TCC meeting. The DEP comment sheet states, "Please provide description of proposed work. Site plan appears to show tree removal in wetlands, why is this work being proposed and how will work be conducted without altering wetlands?" David Sunderland was present to discuss the completed and proposed work. He stated that the three trees allowed to be cut under the Emergency Certification were scheduled to be taken down during the next week. The Commission agreed that it is acceptable to grind the stumps down to the soil level. Harmer explained that the Commission would like to see some replacement/compensation for lost Resource Area values and functions, in the form of small trees native to the Northeast, planted not too close to the house. Sunderland agreed to plant ten trees, 4 to 6 feet in height, at scattered locations in the Buffer Zone Resource Area, the exact locations being their own preference. Harmer asked that they be provided with a list of native plants from which to choose. The Commission explained that two years of growth of the trees, with good viability and condition would be necessary in order for a Certificate of Compliance to be considered. Stump moved to close the hearing and issue an OoC under the Act and Bylaw with Special conditions as discussed. The motion was seconded and passed unanimously.

NoI 307-0593: 80 Alderbrook Drive, (Map 68, Lot 24), Jeff Masterson/Wetlands Land Management, Inc.

Proofs of abutter notification were submitted previously. Stump read the legal ad. The proposal is to construct a swimming pool within Buffer Zone, in an area that is all lawn, approximately 60 feet from the Resource Areas. Additional activity not shown on the plan is after-the-fact removal of five mature pines within the Buffer Zone, three within 20 feet of the stream. Bill Manuell, representing the applicant, discussed the proposed project, an inground pool in Buffer Zone to a Bordering Vegetated Wetland (BVW) swale. He added that four trees – two storm-damaged and two near the house were taken down previously, and some of the chips were spread into the swale; Mr. Masterson did rake those chips out. Spillman explained that she had reviewed the Resource Areas in response to a request for Building Permit signoff, and do not have concerns about how they are shown on the sketch plan. The DEP comment sheet with file number and no comments had been received this same day. Harmer asked if there are many trees on the hill, to which Spillman responded that there are mature trees, but very little understory, although it is more wooded near the BVW swale. The Commission asked for a condition that any water removed from the pool go to an area outside the Buffer Zone. Stump moved to close the hearing and moved to issue an Order of Conditions with Special Conditions as discussed. The motion was seconded and passed unanimously.

NoI 307-0592: 118 Main Street, (Map 24, Lot 75), Marianne Moore/Millennium Engineering. John Olcott at first recused himself (He explained that he is a brother-in-law.), but after hearing the urgency of the septic system repair and the Commission's request to invoke the Rule of Necessity in order to get a quorum for a vote, he agreed to participate with full knowledge of all parties. Proofs of abutter notification were submitted. The proposal is to build a replacement septic system and to build a house addition within Buffer Zone of Bordering Vegetated Wetland. Stump read the legal ad. Spillman explained that a review of the wetland boundary is needed. At a prior site visit she disagreed with the placement of some of the wetlands flags and since, according to MA laws and regulations, Resource Area Boundaries are verified by the Conservation Commission, the Board of Health should not make decisions where wetlands are involved prior to the wetlands lines being verified by the Commission (BoH permit already had been issued). Harmer stated that a review of the wetland line would be made within a few days and Matt Steinel

of Millennium Engineering agreed that any modified flag locations would be shown on a revised plan to be submitted the next Monday. They have an application before the Historic Commission for the proposed 22' x 24' addition. Pre-activity photographs (OoC requirement) already have been submitted. Stump moved to close the hearing and moved to require that any revised plan (resulting from modifications made at the site visit) be submitted in within the next few days. The motion was seconded and passed unanimously.

ANRAD 307-____: 7 Bare Hill Road, (Map 17, Lot 40), Timothy Perkins/Hancock Associates. Proofs of abutter notification were submitted. Stump read the legal ad. Timothy and James Perkins were present. Representative Tom Keough from Hancock Associates, Inc., explained that soil testing was performed about eighteen months ago. He discussed the flagged Resource Areas on the property, including Pye Brook and an Intermittent “feeder” stream. Spillman pointed out that no CoC has been requested for the Bylaw Order of Conditions that was issued for the soil testing, which involved crossing of the Intermittent Stream and BVW. Keough acknowledged that the CoC had not been applied for – this lot would have many issues and at this time they are only requesting confirmation of the Resource Area boundaries. Goldman explained that the Bylaw criteria for Mean Annual High Water (MAHW) need to be used, to which Keough responded that the MAHW flags are based on the obvious change in grade and are contained within the wetland. Keough commented that the culvert in the Intermittent Stream impounds the water behind it and the USGS map shows it as Intermittent. Nearly the entire project would be in Riverfront Area to Pye Brook. In response to a question, the Perkins’s stated that the property deed date is about the mid-1940s. A TCC site visit was scheduled for Wednesday, July 18th at 5:45 p.m. Keough submitted a written request for reduction in Bylaw fee by 50%, to \$624. The Commission will consider this request at the next hearing date, after the site visit. Stump moved to continue the hearing under the Act and the Bylaw to August 22nd in order to receive the DEP comment sheet with file number and to have the site visit. The motion was seconded and passed unanimously.

MEETINGS:

RDA, 2007-06: Washington Street, (Map 33, Lot 1), Topsfield Rail Trail Committee. One proof of abutter notification was submitted (three others were submitted previously). Stump read the legal ad. The proposal is to install a portion of the Rail Trail between Washington Street and Main Street within the Buffer Zone of Bordering Vegetated Wetland and an Intermittent Stream. Geller represented himself and discussed the proposed project – to create a stone dust trail in Buffer Zone. Topsoil would be removed. Harmer responded that the Commission would need some assurance that the stone dust would not migrate into the wetland – this area may need curbing, or some way to contain stone dust. He questioned what would happen to the stone dust when there is traffic on it and a storm afterward. The Commission explained that the hay bales would be present only during the work phase and that the Commission would need a better detail of the proposed work. Abutter Bob Morgan of Washington Street stated that he feared if the area were changed from grass to stone the water might flow more rapidly and flood their property. He believes the entire area of the proposed Rail Trail needs to be considered. Abutters expressed concern about environmental impacts, especially the possibility of contaminated soils in the Rail Trail path area, and a copy of a DEP report titled, “Best Management Practices for Controlling Exposure to Soil during the Development of Rail Trails,” was presented to the Commission and shown to Mr. Geller. Abutters submitted a petition requesting that a Notice of Intent (NoI) be required “for the entire project along with more detailed plans to address all the abutters concerns.” The consensus of the Commission was that additional information is needed such as would be presented with a Notice of Intent, e.g. elevations showing the existing trail and the stone dust that would be placed, a more detailed plan, etc. The Commission agreed with the wording of Positive Determination 4. on the DEP-TCC Determination of Applicability form as presented by Administrator Spillman, that “The work described on referenced plan(s) and document(s) is within the Buffer Zone and will alter an Area subject to protection under the Act. Therefore, said work

requires the filing of a Notice of Intent.” There was discussion involving the Commission, the applicant, and abutters concerning conflicts of interest. Goldman moved to close the meeting and issue a Positive Determination, requiring a Notice of Intent, under the Act and the Bylaw. The motion was seconded and passed unanimously. Harmer explained that, therefore, a Notice of Intent would be needed, with more detailed drawings and some soil testing.

RDA, 2007-07: 39 Howlett Street, (Map33, Lot 24), David Ahern. At 8:27 p.m. Mr. Ahern went home to get the proofs of abutter notifications and returned to be heard at 9:12 p.m. Abutter notification white slips were submitted. Stump read the legal ad. The proposal is to install a fence along the property boundary within Buffer Zone of BVW and two Intermittent Streams, discontinuing at the streams. Mr. Ahern represented himself, explaining that the fence will stop at the streams. He said that he keeps the stream and culvert clean, although he asked Dave Bond to have the Highway Department clean it out after April’s storms. Ahern explained that he wants to install the fence because he has ongoing concerns about his neighbor to the south using his property. Stump moved to close the meeting and issue a Negative Determination of Applicability with Special Conditions under the Act and the Bylaw. The motion was seconded and passed unanimously.

REQUESTS:

Continuation CoC 307-0466: 35 Prospect Street, (Map 40, Lot 4), Marco and Andrea Lara. The Commission is waiting for the required engineer’s letter.

CoC 307-0543: 35, 43, and 51 Willowdale Road, (Map 14, Lots 14,15,16), David Smith. Spillman made a site visit today and did not have concerns. Stump moved to issue the Certificate of Compliance with Continuing Conditions under the Act and the Bylaw. The motion was seconded and passed unanimously.

Topsfield Fair, Fireworks Display at Wheatland’s Hill.

Stump moved to have Spillman write a letter to the Essex Agricultural Society allowing the fireworks display at Wheatland’s Hill under the same conditions as in previous years. The motion was seconded and passed unanimously.

OLD BUSINESS, UPDATES, & MISCELLANEOUS:

120 High Street, (Map 49, Lot 56), Hickory Beech Realty Trust/Joseph Falzone, Trustee – Open Space deed – update

Concluding that the their concerns had not been understood, Commissioners asked that the item be taken off the agenda.

120 High Street, (Map 49, Lot 56), Hickory Beech Realty Trust/Joseph Falzone, Trustee – Planting of native species and control of invasive plants update, work in progress update, and request to decrease frequency of BSC inspections

Goldman, having made a site visit earlier in the day, suggested that a fine should be issued for lack of a pre-activity meeting and for not stabilizing/matting all of the slopes of the driveway on Lot 23. He also expressed concerns that the contractor and others responsible had not been as reactive as they should be – written requests for corrective actions in a series of BSC reports are not being addressed. Stump expressed surprise, commenting that previously the job had been going so well. Harmer did not have concerns and discussed recent activities and proposed future work, including Falzone’s desire to cut mature trees in the outer (farther from wetlands) parts of the Buffer Zones. Stump and Olcott did not support issuance of a fine.

Report from Board of Selectmen Liaison. Mr. McArdle read from a written statement, “as a liaison,” stating that Town Counsel has agreed that there are not problems with the “Conservation Restriction” written for the Open Space property at 120 High Street. He stated that Town boards should not dictate to each other what the other board should do. Spillman requested a written copy of his statement for the Commission. McArdle expressed concern that the TCC minutes have not been forthcoming and offered that the Town Administrator would give the Commission help if asked.

270 Boston Street, (Map 41, Lot 87) Bear Albright

Spillman explained that Mr. Albright is to schedule a site visit as soon as he gets back from being out of the country. Harmer explained that, looking at old maps, on two occasions wetland lines and an Intermittent Stream have been shown on Mr. Albright’s property in the area where clear-cutting and heavy machinery use reportedly recently have taken place.

ENFORCEMENT, APPEAL REPORTS, UPDATES:

Violation Notice & Ticket #2007-04: 5 Fox Run Road, (Map 47, Lot 28), Jeffrey and Lynn Evaul – update

Spillman reported that Mr. Evaul called and is ready for an inspection. He submitted a written appeal of the \$300 fine that TCC will address after a follow-up site inspection.

Enforcement Order, Violation Notice & Bylaw Ticket #2007-03: 43 Cross Street, (Map 62, Lot 2), Christopher Nash – update

There has been no response from Mr. Nash and the \$500 ticket payment was due May 9th. TCC asked Spillman to file a complaint with the District Court for noncompliance with an Enforcement Order and nonpayment of the Bylaw fine. Harmer suggested that a flyover is needed and the Commission may end up getting a search warrant. The Commission agreed that a flyover is necessary.

3rd Amended Enforcement Order: 64 Wenham Road & 255 High Street, (Map 71, Lot 22 & Map 65, Lot 1), Stephen Bernstein No update was given.

Enforcement Order: 50 Prospect Street, (Map 48, Lot 12), John Molloy/Hancock Associates. No update was given.

Amended Enforcement Order, OoC 307-0462, 39 Prospect Street, (Map 40, Lot 97), Eliot Sherr & Mary Ellen Gardiepy – update

Spillman reported that the \$2,400 Bylaw ticket was paid last week.

Violation Notice & Ticket #2006-18: 42 Washington Street, (Map 32, Lot 133), Matthew and Stephanie Maloney – update

At the continuation of the District Court hearing on Monday, July 9th, since the required filing had not been completed, the \$200 fine was upheld. The Maloneys have ten days to pay the fine.

Spillman reported that she has been attempting to get the Maloneys to complete their RDA filing – only copies of the original, copy to DEP, and \$50 filing fee have yet to be taken care of.

Amended Enforcement Order, Violation Notice & Ticket #2006-20: 221 Washington Street, (Map 47, Lot 2), Andrzej Galka – update

The previous week, Harmer and Spillman spent over two hours assisting Mr. Galka with his after-the-fact application. At the continuation of the District Court hearing on Monday, July 9th, since the required filing had not been completed, the \$500 fine was upheld. Mr. Galka has ten days to pay the fine. Spillman reported that she and Harmer would be meeting again with Mr. Galka the next morning, hopefully to complete the filing.

Violation Notice & Bylaw Ticket #2007-05: Route 1 and Route 97, (Map 41) Jay Marchese
Hay bale lines have been installed to stabilize the area. The Bylaw ticket was paid the previous day.

Violation Notice & Bylaw Ticket #2007-07: 35 Stagecoach Road, (Map 11, Lot 14) Laura and Gerard Arcari

Spillman reported that Laura Arcari came to the TCC office that morning and now is working to bring the property into compliance. She expects an appeal of the fine, which would be heard in August.

ADMINISTRATOR'S REPORT:

- Office coverage during vacations. Commissioners discussed office and site visit coverage.
- Town Flood concerns – committee, update. There was no update
- Summer Intern Update. Joanna Larson has been very busy and has been of great assistance.
Miranda Giuffrida has decided not to accept the offer. Harmer noted that Spillman and Larson went to look at the area near the SBWSB canal for vernal pool activity.
- Revisions to Regulations, Policies. Harmer suggested that Commissioners read over the Regulations and the Bylaw and see what changes should be mad

Goldman moved to adjourn the meeting at 10:22 p.m. The motion was seconded and passed unanimously.

Respectfully submitted

Lana Spillman, Conservation Administrator

Approved at the TCC meeting on August 22, 2007.